IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12496 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN KALUBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/06/2001

ORAL JUDGEMENT

#. This is a petition under Article 226 of the Constitution of India by which the petitioner has prayed for setting aside the order of the respondents by which the petitioner is denied the benefit of compassionate

appointment.

#. The father of the petitioner one Kalubhai Parmar was serving as Assistant Sub Inspector in Banaskantha District. He died on 17.9.1998 in an accident. It is the case of the petitioner that his father was in service at the time of his death. The petitioner thereafter made an application on 22.2.1999 to respondent No.3 for giving him the benefit of compassionate appointment as per the rules of the Government. In the application the petitioner has prayed for giving an appointment on the post of Peon. Alongwith his application, he has submitted necessary evidence about the income of the family. At the time of forwarding the application of the petitioner, the concerned authority i.e. Additional Director General of Police, Gujarat State, Ahmedabad recommended the case of the petitioner for such appointment. That recommendation is at page 12 of the petition. However, by order dated 14.10.1999 the claim of the petitioner for such appointment was denied on the ground that total income of the family of the deceased is Rs.3394/- which is more than Rs.2500/-, and therefore, the said benefit cannot be given. The said order is impugned in this petition.

#. At the time of hearing of this petition, it was argued by Mr.Supehia that while considering the total income, the Department has considered the income of the pension of the family of the deceased. He placed reliance on the decision of this Court dated 1.1.1999 in Special Civil Application No.11020 of 1993 in the case of Dilipainh B Rathod Vs. State of Gujarat. This Court has taken the view in the aforesaid judgment that while considering the total income of the family of the deceased, income of the pension is not required to be taken into consideration. In para 3 it has been observed by this Court as under :

"Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court on the case of C.B.Maru V Dhanduka Nagar Panchayat, reported in 1993 (2) G.L.H. 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai V State of

Gujarat and ors, reported in 1998(1) GLH (UJ) 23. In C.B.Maru's case (supra), this Court while placing reliance in the case of Smt.Phoolwati Vs Union of India and ors, reported in AIR 1991 SC 469 has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/per month and her husband had died on 15th October 1990. In the case of C.B.Maru (Supra) the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1000/-. In the present case, the father of the petitioner had died in April, 1991 and, in the case of C.B.Maru (Supra), the date of the death of deceased is October 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 505 Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50/-, and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1000/-. In any case, the fact remains that this Court has taken the view in the case of C.B.Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (Supra) this Court while placing reliance on C.B.Maru's case (supra) has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension in Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1000/- and therefore, this Court

> has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date of copy of this order is served upon the Respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this order and for that purpose, direct service is permitted."

#. Under the aforesaid circumstances, this petition is required to be allowed and the matter is required to be sent back to the State Government for reconsidering the question about giving compassionate appointment to the petitioner. The respondent No.1 is directed to take fresh decision in connection with the application of the petitioner for compassionate appointment in accordance with law and while taking the said decision and calculating the income of the family of the deceased, the amount of pension which the family of the deceased is receiving may not be taken into consideration. It will be open for the authority to arrive at the decision considering the other facts of the case to find out whether the petitioner is required to be given compassionate appointment or not. So far as the income criteria is concerned, as stated above while computing the income, income of pension received by the family of the deceased is not required to be taken into consideration. The petition is accordingly allowed. The

impugned orders are quashed and set aside. The respondents are directed to take fresh decision in the matter as early as possible preferably within a period of three months from the date of receipt of the writ of this order and as per the directions and observations made hereinabove. The writ of this order to be sent forthwith. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)